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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,737	10/02/2000	Curtis Cole	JBP525	3415

7590                    12/18/2002

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[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1617

DATE MAILED: 12/18/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/677,737	COLE ET AL.
	<b>Examiner</b> Gina C. Yu	<b>Art Unit</b> 1617

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 23 September 2002.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-6 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 9-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other:

## DETAILED ACTION

Receipt is acknowledged of Response filed on September 23, 2002. Claims 1-6 and 9-16 are pending. Claim rejection under 35 U.S.C. § 102 is maintained for reasons of record as indicated in the previous Office action dated June 23, 2002. Claim rejection under 35 U.S.C. § 103 is withdrawn in view of applicants' remarks, and new rejection is made. Claims 1-6 and 9-15 are pending.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-5 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Perricone (US 6365623 B1) ('623).

Rejection is maintained for reasons of record as indicated in the previous Office action dated June 3, 2002.

2. Claims 1-5 are rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by Perricone (US 6319942 B1) ("Perricone '942).

Perricone '942 teaches that the alkanolamines recited in the instant claims is useful in treating scars. See col. 3, line 7 – col. 4, line 8. The most preferred embodiment contains 3 % by weight dimethylaminoethanol and 5 % by weight of tyrosine. See col. 7, line 44 – col. 8, line 25. The reference teaches that the formation of scars undergo inflammatory stage, and that hypertrophic and keloid scars show inflammatory activity. See col. 2, lines 31-53. The reference also generally teaches

that scars are associated with "itching, burning, stinging or painful sensations", resulted from trauma, burns, or disease. See col. 1, line 5 – col. 2, line 9.

3. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by Ptchelintsev (US 5972993).

Ptchelintsev discloses a topical composition comprising 0.5 % by weight of triethanolamine, useful in treating rosacea. See col. 10, lines 33-66. The method of using the topical composition is inherent.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toth (WO009804280A2).

The Toth abstract teaches an anti-inflammatory ointment composition comprising one or more of amino acids such as serine and tyrosine. See abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formulated a topical composition for inflammation by employing serine or tyrosine as suggested by the reference. The method of topically using the composition would have been obvious to one having ordinary skill in the art at the time the invention was made.

2. Claims 6, 9, and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perricone '942 as applied to claims 1-5 above, and further in view of De Lacharriere et al. (US 5968532) ("de Lacharriere").

Perricone '942, discussed above, fails to teach treating redness or inflammation caused by the irritants recited in the instant claims.

De Lacharriere teaches method of treating irritant side effects of dermatological compositions. The reference teaches "dysaesthetic sensations" to generally refer to sensations such as stinging, itching, burning, inflammation, etc. See col. 1, lines 43 – 64. The reference also describes the inflamed skins of sensitive skin types have sensation of "inflammation, pulling, tingling, and/or redness" by factors such as food, environment and certain cosmetic products. See col. 2, lines 9 – 14. It is further taught that sensitive scalps undergo sensations of itching, stinging, and/or of inflammations triggered by soap, surfactants, environment, and cosmetics, etc.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of treating scars or inflamed skin condition described in Perricone '942 by applying the composition therein to the reddened or inflamed skin caused by the irritants or damaged by environments as motivated by de Lacharriere. The skilled artisan would have expected that the composition that is effective in treating inflammatory scar wounds would be similarly effective in reducing inflammation or the associated symptoms caused by other factors.

***Response to Arguments***

Applicant's arguments filed on September 23, 2002 have been fully considered but they are not persuasive in part and moot in view of the new grounds of rejections in part.

In response to applicants' argument that the Perricone '623 patent fails to teach all the limitation of instant claims 1-5, examiner notes that the recited method steps in the instant claims are disclosed in the reference. Applicants' argument that the dimethylaminoethanol and tyrosine mentioned in the reference are mere adjuvants is not persuasive. The reference specifically disclosed as the formulation having 0.5-5 % by weight of dimethylaminoethanol and 0.05-5 % by weight of tyrosine as a "particularly efficacious embodiment". See Perricone '942, col. 8, line 41 – col. 9, line 23.

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
Patent Examiner  
December 12, 2002

  
SREENI PADMANABHAN  
PRIMARY EXAMINER  
12/13/02